



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

FEB 01 2017

William M. Guerry
Jonathan K. Cooperman
Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, D.C. 20007

Dear William and Jonathan:

Thank you for your emails of January 27, 2017, with supplemental responses from Big Ox Energy, LLC, to the U.S. Environmental Protection Agency's December 22, 2016, Clean Water Act 308 information request and December 22, 2016, Clean Air Act 114 information request. Upon review, it appears that your responses are incomplete, and therefore the EPA does not consider your responses to date to be in compliance with the CWA and CAA.

Your cover letter to each of the supplemental responses included a request on behalf of Big Ox for all information submitted in response to the respective requests and all information discovered or gathered by the EPA during the facility and other inspections be treated as confidential trade secrets. Your letters further requested that the information be permanently maintained as confidential.

Please note that any document that is publicly available or required by statute or regulation cannot be claimed as Confidential Business Information. Items falling in these categories include, but are not limited to, the facility's CAA permit with the state of Nebraska, air emissions data, any wastewater treatment agreements with the cities of South Sioux City or Sioux City and effluent data. Please refer to the rules governing information obtained under the CAA and CWA at 40 C.F.R. Part 2, Subpart B, and in particular to 40 C.F.R. §§ 2.201, 2.208, 3.301 and 2.302. We believe the majority of the documents submitted as exhibits in your supplemental responses fall under the categories that would not warrant treatment as CBI.

Although the EPA will for the time being treat the submittals to the CAA and CWA information requests and other information gathered by the agency directly from Big Ox or during an inspection or investigation by the agency of the Big Ox facility as CBI, the agency will be sending a CBI substantiation request in response to which the agency will make a CBI determination.

Any document for which a CBI claim is being made should be sent in hard copy to the agency under special, sealed cover clearly marked as CBI; email does not provide sufficient protections for submission of CBI. Your failure to treat information in a confidential manner when submitting it to the

agency complicates the ability of the agency to provide appropriate safeguards. Please refer to the instructions included in the information requests for additional helpful information.

WITH REGARD TO THE CAA 114 INFORMATION REQUEST

The agency renews its original information request with respect to certain information not included in your response. Questions 3, 4 & 5 request that data in both electronic and paper format be submitted in support of your responses. Please submit the relevant data in support of your responses and if no data exists explain why. For example, in response to question 3, you indicate that “[T]he concentration of hydrogen sulfide in the biogas has been consistently low, less than 500 ppmv, and appears to be trending down.” Calculations, monitoring data, etc., should have been submitted with your responses.

You also maintain in your response that Big Ox is not subject to the EPA’s CAA authority under Section 112(r) or to the agency’s Risk Management Program and attach a letter (Exhibit F) from the company’s environment and safety consultants. Big Ox and its consultants maintain that quantities of methane and hydrogen sulfide on site at the facility are below the threshold quantities set for in the RMP regulations. Please note that it appears that the calculations contained in your consultant’s report are incorrect. The piping volume of 1.4 cubic feet and the piping diameter of 1.67 feet indicates a pipe length of about 0.5 feet resulting in higher inventories of methane and hydrogen sulfide on site.

Regardless of the amount of inventory of methane and hydrogen sulfide on site, as noted in the agency’s January 13, 2017, letter, in the amendments of 1990, the Congress enacted 112(r)(1), also known as the General Duty Clause. “The General Duty clause applies to any stationary source producing, processing, handling of storing regulated substances of any other extremely hazardous substances.” Both methane and hydrogen sulfide are extremely hazardous substances and subject to the General Duty Clause. U.S. Environmental Protection Agency v. American Acryl, N.A., L.L.C., CAA-06-2011-3302 (June 2, 2011); *see also* <https://www.epa.gov/rmp/general-duty-clause-under-clean-air-act-section-112r1>.

Big Ox’s South Sioux City facility is subject to the General Duty Clause. Facilities subject to the General Duty Clause are, among other things, responsible for the following:

- Knowing the hazards posed by the chemicals and assessing the impact of possible releases, to include safety data sheets for hazardous substances and planning for possible releases including identifying at risk receptors.
- Designing and maintaining a safe facility to prevent accidental releases, to include utilizing applicable industry codes and standards, and/or equipment manufacture recommendations when designing a facility.
- Minimizing the consequences of accidental releases that do occur, to include systems in place to mitigate releases, such as monitors, sprinklers and coordination with local emergency responders.

Please provide complete responses to questions 3, 4 and 5 and question 10 through 15 of the CAA 114 information request on or before February 8, 2017.

WITH REGARD TO THE CWA 308 INFORMATION REQUEST

Please note that with regard to both the initial and supplemental responses to the CWA information request, only the email attachment with exhibits A through E were able to be opened. One attachment to the email that was removed by the agency server may have contained exhibits F through M, which are identified as responsive in whole or in part to questions 8, 9, 10, 13, 14, 15 and 16.

In response to question 5, a general process flow diagram was provided (exhibit D), but the information request asked for “as-built production process flow diagram” or “pipe and component diagram.” Exhibit F was referenced in the response, but that exhibit was not available to the agency. Please provide the requested diagrams or state with specificity that no such diagrams have been created.

Question 6 requested an as-built wastewater treatment system flow diagram and a description of the wastewater treatment process. The response provided the general flow diagram (exhibit D), but did not address the internal wastewater treatment process, chemical process, chemicals or materials added during the process, etc. Please provide the requested information.

Question 7 requested a list and cause of any process upsets. The response indicated that to the company’s knowledge “there has been no process upset that would result in any violation of federal or state air standards.” To clarify, in the CWA information request the agency is seeking information regarding any upsets from the treatment of feedstock received from external sources (e.g., wastewater from BPI, CHS, etc.). By upset, we mean any event that bypassed, took any piece of equipment off-line, or exceeded the design capacity of any component of the feedstock treatment process. During the agency’s inspection the week of January 9, 2017, the Big Ox staff informed the agency that the GEM unit was not operating properly. Please provide information in response to question 7 that addresses any upsets as described above.

In response to question 11, Big Ox stated that it has no wastewater monitoring and sampling data because Sioux City conducts testing. Has Big Ox measured any outgoing (piped or hauled) flow volumes or rates, pH or other parameters? Has Sioux City provided copies of analysis to Big Ox? Has any wastewater from Big Ox been land applied? Please respond to each of these clarifying questions and provide all responsive documents.

Question 17 requests engineering studies that address the generation and treatment of wastewater, and question 18 requests feasibility studies or engineering studies performed prior to plant construction that discuss the quantity, quality, and volume of flows intended or anticipated to be treated by Big Ox. Your response declines to provide any information with regard to either question based on an assertion that Big Ox has no such studies “required by the Clean Water Act or its implementing regulations to provide to EPA.” Section 308(a) of the CWA authorizes the agency to require the owner or operator of any source to provide information that it may reasonably require to, among other things, determine whether any person is in violation of any pretreatment standard. Therefore, please state with specificity whether Big Ox has engineering and/or feasibility studies described in questions 17 and 18, and if so, provide copies of such studies.

Please provide missing exhibits and complete responses to questions 5 through 11, and 13 through 18 of the CWA 308 information request on or before February 8, 2017. As a reminder, Big Ox is required by the terms of the CWA information request to include a certification statement with each submittal.

Should you need additional information or have any follow up questions, we would be happy to schedule a phone call. Please contact Pat Miller at miller.patriciag@epa.gov regarding any CWA related issues or Anne Rauch at rauch.anne@epa.gov for any CAA related issues.

Sincerely,

A handwritten signature in blue ink, appearing to be "Patricia Gillispie Miller", with a long horizontal flourish extending to the right.

Patricia Gillispie Miller
Senior Counsel

A handwritten signature in blue ink, appearing to be "Anne Rauch", with a long horizontal flourish extending to the right.

for Anne Rauch
Senior Counsel